

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of)	MM DOCKET NO. 93-135
)	
THE PETROLEUM V. NASBY CORPORATION)	File No. BRH-890601VB
)	
For renewal of Station WSWR(FM))	
Shelby, OH)	DOCKET FILE COPY ORIGINAL
)	
THE PETROLEUM V. NASBY CORPORATION)	File No. BTCH-921019HX
)	File No. BTCH-921019HY
For transfer of control of Station)	
WSWR(FM), Shelby, OH)	

To: The Honorable Edward Luton
Administrative Law Judge

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AUG 5 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Supplement and Errata to
MOTION FOR SUMMARY DECISION AND GRANT OF THE
RENEWAL AND TRANSFER OF CONTROL APPLICATIONS
OF
THE PETROLEUM V. NASBY CORPORATION

On August 2, 1996, The Petroleum V. Nasby Corporation ("Nasby") filed a Motion for Summary Decision and Grant of the Renewal and Transfer of Control Applications of Nasby in the above-referenced proceeding. The declarations of Joanne L. Root (following PVN Ex. 8) and Timothy J. Moore (following PVN Ex. 9) were facsimiles; included hereto are the original declarations of these individuals. In addition, the following corrections should also be made to the motion:

At page 3, ¶ 4, line 1: insert "there" between the words *that* and *has*.

At page 5, ¶ 6, line 5: the word *for* should be "or".

At page 6, fn. 3, line 12: insert "by" before the word *Kathy*.

At page 7, ¶ 9, line 9: delete "any" between the words *the* and *transfer*.

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Copies of the corrected pages are also included herein for handy reference.

Respectfully submitted,

Ann C. Farhat

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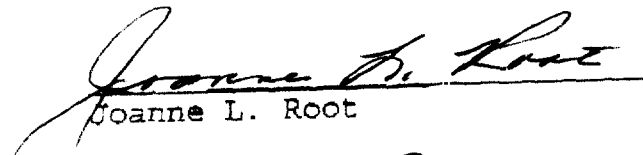
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Counsel for The Petroleum
V. Nasby Corporation

August 5, 1996

DECLARATION OF JOANNE L. ROOT

The foregoing testimony is made under penalty of perjury and is true and correct to the best of my knowledge.


Joanne L. Root

Dated: August 2, 1996

DECLARATION OF TIMOTHY J. MOORE

The foregoing testimony is made under penalty of perjury and is true and correct to the best of my knowledge.



Timothy J. Moore

Dated: August 2, 1996

Corrected Pages

FACTS

Issue: *Potential for Influence and Control
on Nasby by Thomas L. Root.*

3. Kathy G. Root owns 33 shares of Nasby stock in her own name, and is the custodian of 50 shares of Nasby stock for the benefit of two of her minor children born to her and her spouse, Thomas L. Root. PVN Ex. 6, p. 1. Arlene M. Geer, the mother of Kathy G. Root, is the Trustee of three trusts formally established in December, 1987, by Thomas L. and Kathy G. Root, for the benefit of their minor children, Thomas P. J. Root, Leslie J. L. Root, and Travis S. C. Root. PVN Ex. 7, pp. 1-2. The trusts, however, were not funded with Nasby stock until June 1989. According to Kathy G. Root, the trusts were established as part of estate planning undertaken by her and Thomas L. Root, and the stock transfers were structured so as to permit the transfers without exceeding the \$10,000 per donee gift tax ceiling, considering the fair market value of Nasby stock at the time of \$400 per share. *Id.*

4. Both Kathy G. Root and Arlene M. Geer state that there has never been any discussion, agreement or understanding, with Thomas L. Root, that the stock transfers were effectuated in order to facilitate him with the ability to allocate control over Nasby, then, now or in the future. Both further state that there has never been any attempt by Thomas L. Root to exercise or exert control over Nasby by virtue of the Nasby stock held by Kathy G. Root in her own name, or by Kathy G. Root and Arlene M. Geer, as

testimony.

pending in the instant proceeding. PVN Ex. 8, p. 4. At all times, since the pledged stock was purchased in June, 1989, up to and including the present day, the voting rights have been retained by Joanne L. Root and her spouse, free and clear from any potential influence and control by Thomas L. Root or the law firm. *Id.*

CONCLUSIONS

Issue: *Potential for Influence and Control
on Nasby by Thomas L. Root.*

7. Section 1.251(a)(1) of the Commission's Rules requires that the party filing a motion for summary decision, "show by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of a material fact for determination at the hearing." 47 C.F.R. § 1.251(a)(1). Nasby, the party filing the instant motion, has provided the declarations² of Kathy G. Root, Arlene M. Geer, Joanne L. Root and Timothy J. Moore, attached to the motion as PVN Ex Nos. 6 through 9, respectively. The testimony of these individuals, made under penalty of perjury, clearly establishes that there is no genuine issue of a material fact for determination at hearing.

8. The facts reveal that there has never been any attempt by Thomas L. Root to allocate or exert control over Nasby by virtue of his relationship to Nasby principals Kathy G. Root, Arlene M. Geer and Joanne L. Root. In order to bring the instant proceeding to an earlier conclusion and to allay any lingering concerns of the

² Section 1.16 of the Commission's Rules, 47 C.F.R. § 1.16, permits the submission of unsworn declarations made under penalty of perjury in lieu of affidavits. The declarations set forth as PVN Exs. 6 through 9 comply with § 1.16 of the Commission's Rules.

Commission concerning any potential influence by Thomas L. Root over Nasby in the future, Nasby, in voluntary cooperation with the Mass Media Bureau, has taken further safeguards to assure that Nasby will not be subject to any potential influence or control by Thomas L. Root in the future. These safeguards include, *inter alia*, the transfer of Nasby shares, subject to your Honor's approval, from Kathy G. Root and Arlene M. Geer, Trustee of the trusts established for the benefit of the Root minor children, to Thomas J. Stoll, Esquire, Trustee, an independent individual, pursuant to The Root Family Irrevocable Trust.³ In particular, Section Eighth of the The Root Family Irrevocable Trust prohibits any Beneficiary (*i.e.*, Kathy G. Root or any of the Root minor children) from directing the Trustee in the discharge of his duties, vesting all voting rights for any stock deposited in the Root Family Irrevocable Trust, in the Trustee, Mr. Stoll. The Trustee is further prohibited from selling or otherwise conveying any Nasby stock to any Beneficiary, any Settlor (*i.e.*, Kathy G. Root or Arlene M. Geer), to Thomas L. Root, or any member of the immediate family of any of the foregoing. See PVN Ex. 6, p. 4;

³ The Root Family Irrevocable Trust attached as Appendix D to the Testimony of Kathy G. Root (PVN Ex. 6) has been signed by Kathy G. Root and Arlene M. Geer. As directed by the Presiding Judge before or after he acts on the instant motion, it is anticipated that Nasby will submit a minor amendment to the Nasby transfer of control application assigned File No. BTCH-921019HX, for acceptance by the Presiding Judge. The amendment will provide the requisite transferee qualifications information required by FCC Form 315 relative to Thomas J. Stoll, will include a copy of the fully executed Root Family Irrevocable Trust, and will be signed by an officer of Nasby, by Thomas J. Stoll, Esquire, Trustee as transferee, and if required, by Kathy G. Root and Arlene M. Geer.

Appendix D, pp. 6-7 ; PVN Ex. 7, pp. 3-4. Restrictive legends on the Nasby shares of stock to be held by The Root Family Irrevocable Trust will also be imposed by Nasby prohibiting the transfer or conveyance to Thomas L. Root. See PVN Ex. 9, Appendix A, p. 2.

9. Moreover, the Last Will and Testament of Joanne L. Root and Thomas F. Root, the parents of Thomas L. Root and grandparents of the offspring of Thomas L. and Kathy G. Root, have been amended to prohibit the transfer or conveyance of any stock they own individually or jointly, to Thomas L. Root, or any member of his immediate family upon the death of either Joanne L. Root or Thomas F. Root. See PVN Ex. 8, p. 6; PVN Ex. 9, pp. 1-2 and Appendix A, p. 1 thereto. A corresponding restrictive stock legend, prohibiting the transfer or conveyance of Nasby stock they own (25 shares collectively) or later acquire, to Thomas L. Root or any members of his immediate family, has also been agreed to by Joanne L. Root and Thomas F. Root with Nasby. See PVN Ex. 9, pp. 1-2 and Appendix A, pp. 1-2 thereto. Joanne L. Root has also voluntarily resigned her positions as a director and Secretary of Nasby effective July 2, 1996, notwithstanding the fact that she has acted properly and responsibly in carrying out her fiduciary duties to Nasby and its shareholders. See PVN Ex. 8, p. 5.

ULTIMATE CONCLUSIONS

Accordingly, for the foregoing reasons, the Presiding Judge is respectfully requested to issue a Summary Decision in favor of The Petroleum V. Nasby Corporation, resulting in the unconditional grant of the application of The Petroleum V. Nasby Corporation for

CERTIFICATE OF SERVICE

Ann C. Farhat, a member of the firm of Bechtel & Cole Chartered, certifies that on August 5, 1996, she caused copies of the foregoing Supplement and Errata to Motion for Summary Decision and Grant of the Renewal and Transfer of Control Applications of The Petroleum V. Nasby Corporation to be served by hand on the following individuals:

The Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
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James Shook, Esquire
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Ann C. Farhat